

## **Gregg County Plan for Appointment of Counsel – 2006**

The District Judges and County Court at Law Judges of Gregg County, Texas, hereby adopt orders and procedures for the appointment of counsel for indigent persons, accused of committing a crime in Gregg County, Texas. This document is the Gregg County Plan for Appointment of Counsel, which complies with the requirements of Senate Bill 7, Title 1, Section 174.1-174.4 of the Texas Administrative Code, and the guidelines of the Office of Court Administration's Task Force on Indigent Defense. The effective date of this plan is May 1, 2006.

### **Enforcement Responsibilities**

#### **Magistrate's Responsibilities**

At the hearing required under Article 15.17 of the Code of Criminal Procedure, the magistrate shall:

1. Admonish the accused of the magistrate and Miranda warnings, as required by law.
2. Notify the accused of the indigent representation rights.
3. Make specific inquiry into whether the accused understands the the indigent representation rights.
4. Advise the accused to contact Pre-Trial Services to make application for court-appointed counsel.
5. Provide the accused the address and telephone number of Pre-Trial Services and instructions for contacting the Pre-Trial Services Office.

6. Utilize the attached magistrate's warning and Pre-Trial forms when performing the responsibilities set out in this section.

Each accused person shall be brought before a magistrate within forty-eight (48) hours of arrest for proceedings under Article 15.17 of the Code of Criminal Procedure.

When an eligible defendant submits the required documents for the appointment of counsel, the request and documents will be transmitted to the appointing authority (court or court's designee) within twenty-four (24) hours of the request.

#### Pre-Trial Services Responsibilities

Pre-Trial Services will be responsible for receiving applications for court-appointed counsel, considering applicant financial eligibility, reporting requests for court-appointed counsel to the appropriate court, contacting the attorney appointed to represent the accused, verifying initial attorney-client contact, and other matters which would ensure compliance with the law.

To accomplish these responsibilities, Pre-Trial Services shall:

1. Regularly monitor the inmate population of the Gregg County Jail, assisting inmates in completing the applications requesting court-appointed counsel.
2. Receive applications from both inmates confined in the county jail and those on bond.
3. Make recommendations to the appropriate judge as to whether applicants meet the financial eligibility requirements related to court-appointed counsel.

4. Notify attorneys who are appointed by the court as to whom they have been appointed to represent and verify that initial client-attorney contact occurred in a timely manner.
5. Supervise defendants who have been appointed counsel and who have made bond.
6. Perform the responsibilities set out in this section in a timely manner, ensuring that attorneys are appointed within three (3) working days of the date the request for appointed counsel is made.

#### Contact Person for Out of County Arrests

The person who should be contacted to arrange for appointments of counsel when a person is arrested in another county, based on an arrest warrant or directive to apprehend which originated in Gregg County is Jaime Mitchell. Ms. Mitchell's title is Community Supervision Officer. She may be reached at 903-236-8422 or via email at [Jaime.Mitchell@co.gregg.tx.us](mailto:Jaime.Mitchell@co.gregg.tx.us).

#### Judicial Responsibilities

The Board of Judges of Gregg County shall set standards for counsel for those attorneys who request placement on the rotation list and receive appointments to represent indigent defendants in Gregg County.

The Board of Judges shall establish a list of attorneys who will be eligible for court appointments and shall make appointments in a rotating manner as required by law.

The Judges of the District Courts shall make appointments of counsel to all defendants who meet the financial eligibility requirements of indigency and who are charged with felony

offenses and those defendants who are charged with felony offenses in addition to misdemeanor offenses. A determination of indigency will be based upon the information provided to the Court in the Request for Court Appointed Counsel

The Judges of the Statutory and Constitutional Courts shall make the appointment of counsel to all defendants who meet the financial eligibility requirements of indigency and are charged with misdemeanor offenses only.

## **PROCEDURAL CONSIDERATIONS**

### **Qualifications for Appointment**

Only attorneys who request consideration and receive approval will be placed on the attorney rotation list and considered for appointment. Attorneys will be selected based on the order in which their name appears on the rotation list. Applicants must meet the following minimum qualifications to be considered.

#### **Death Penalty Cases:**

An attorney appointed as lead counsel in a death penalty case must meet the requirements of Article 26.052(d)(2) of the Code of Criminal Procedure.

#### **Capital Felony Cases:**

1. Be a member of the State Bar of Texas.
2. Meet the requirements set forth in the Code of Criminal Procedure.

#### **Felony 1, 2, & 3 Cases:**

1. Be a member of the State Bar of Texas.
2. Have at least two (2) years of experience in the practice of criminal law.

3. Have participated in at least three (3) criminal trials (first or second chair).

State Jail Felony, Revocations, and Misdemeanor Cases:

1. Be a member of the State Bar of Texas.
2. No specific experience is required.

Every attorney on the court appointed list(s) will be required to have a local telephone number, one that is capable of being called without a long distance charge.

Every attorney on the court appointed list(s) will have an office or residence within 30 miles of the Gregg County Courthouse.

Minimum Continuing Legal Education Requirement

Appointment in Criminal Cases

An attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible to be appointed under the Plan for Appointment of Counsel – 2004.

An attorney may be appointed under this rule only if the attorney:

1. Completes a minimum of six (6) hours of continuing legal education pertaining to criminal law during each twelve (12) month reporting period. The first reporting period began April 27, 2003, and then on the first day of each reporting period thereafter. Continuing legal education may include activities accredited under Section 4, Article XI, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing; or,

2. Is currently certified in criminal law by the Texas Board of Legal Specialization.

### Reporting Period

Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.

Continuing legal education activity completed during any reporting period in excess of the minimum six (6) hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

To be included on the appointment list, each attorney must annually submit an affidavit to the county detailing the criminal continuing legal education activities completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist in criminal law.

### Emergency Appointment

If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in criminal law.

### Standards of Conduct by Attorneys

Any attorney seeking to be included on the list for indigent appointments shall comply with all requirements of the State Bar of Texas and this Board of Judges for minimum continuing legal education. Each attorney shall annually provide an affidavit to the

Board of Judges that he or she has successfully fulfilled the CLE requirements. Each attorney shall further comply with the Canon of Ethics and Rules of Discipline of the State Bar of Texas. Each attorney shall conduct his business in a manner that would not demean the practice of law. An attorney should not, directly or indirectly, suggest that a defendant owes him anything in payment beyond the fee paid by the County, nor shall he collect any fees, favors, or gifts in exchange for legal services rendered.

### **Procedures for Removal of Attorneys from the Court-Appointed List**

#### **Grounds for Removal**

An attorney may be removed from the appointment list if the attorney:

1. has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure;
2. has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;
3. fails to maintain compliance with each of the appointment list guidelines;
4. has been found by a court to have provided ineffective assistance of counsel
5. has violated a rule of professional responsibility;
6. has been convicted of or received a deferred adjudication for any an offense, other than an offense punishable by a fine only;
7. is under indictment or being formally charged with an offense, other than an offense punishable by a fine only; or

8. has intentionally misrepresented statements on the application for the appointment list.
9. good cause as determined by a majority of the judges.

### Referral

If a judge believes that an attorney has violated any of the provisions listed in the paragraph above, the judge may refer an attorney to the board of judges for removal from the appointment list. The referral must be in writing and shall clearly state the grounds that form the basis of the referral. No disciplinary action with respect to the attorney being retained or removed from the appointment list may be made without such a referral.

### Notification/Hearing

Upon receiving an attorney referral, the board of judges shall notify the attorney in writing of the referral and inform the attorney of the grounds that form the basis of the referral. The notice shall also inform the attorney of the time and place the board of judges will meet to discuss the referral and give the attorney an opportunity to respond to the referral in writing or in person or both.

### Action

After the board of judges meets and gives the attorney an opportunity to be heard, the board of judges shall determine whether the attorney should:

1. remain on the appointment list at the same level;
2. moved to an appointment list for indigent defendants charges with less serious offenses; or
3. be removed from appointment list altogether.

The attorney may be removed from the appointment list or moved to an appointment list for indigent defendants charged with less serious offenses by a majority vote of the judges present. In

addition, the majority of the judges may also vote to require the attorney to take other rehabilitative measures. Removals from any list may be probated. For removal or probated removals, the judges ordering the removal may require the completing of rehabilitative measures as a condition of probation or reapplication. An order of removal should state in the order the earliest date at which the attorney may apply for reinstatement. An attorney who was removed from an appointment list under number 7 shall be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted, unless other grounds for removal exist against the attorney that would prohibit reinstatement.

The decision of the board of judges is final and may not be appealed.

#### Attorney Fee Schedule

The attorney fee schedule heretofore adopted by the judges on February 16, 1998, and attached hereto, is now the attorney fee schedule under the Gregg County Plan for Appointment of Counsel.

#### Investigative and Expert Expenses

Counsel appointed in non-capital cases shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

## Procedure With Prior Court Approval

Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state, as applicable:

1. The type of investigation to be conducted or the type of expert to be retained;
2. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and,
3. An itemized list of anticipated expenses for each investigation or each expert.

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies, in whole or in part, the request for expense, the court shall:

1. State the reasons for the denial in writing;
2. Attach the denial to the confidential request; and,
3. Submit the request and denial as a sealed exhibit to the record.

## Procedure Without Prior Court Approval

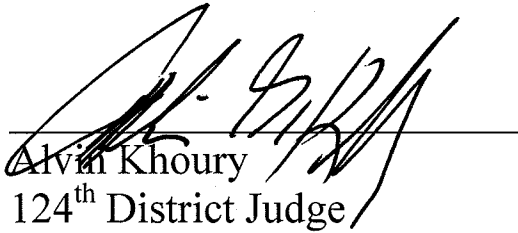
Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonably incurred or unnecessary expenses will not be reimbursed.

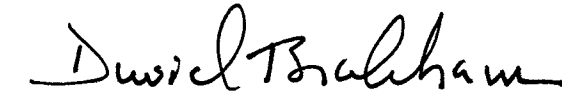
## Attorney Payment Form


The attached attorney payment form is adopted for use under the Gregg County Appointment of counsel Plan. It must be completed by the attorney and submitted to and approved by the presiding judge before payment may be made to the attorney.

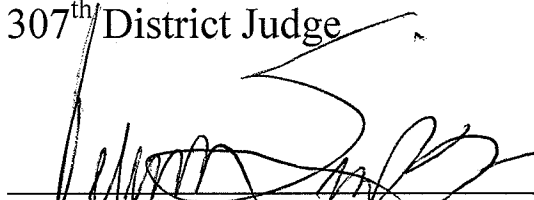
Two-thirds of the judges hearing both misdemeanor and felony cases having approved it, this document replaces any existing plans or supplements related to the appointment of counsel in Gregg County. The Gregg County Plan for Appointment of Counsel - 2006 is effective May 1, 2006.


Signed and certified this 4 day of <sup>October</sup>~~May~~, 2006.

  
Alvin Khoury  
124<sup>th</sup> District Judge

  
David Brabham  
188<sup>th</sup> District Judge

  
Robin Sage  
307<sup>th</sup> District Judge

  
Rebecca Simpson  
County Court at Law #1 Judge

  
Alfonso Charles  
County Court at Law #2 Judge

